

**Town of Milford
Zoning Board of Adjustment Minutes
January 16, 2014
Cyndi Nute
Case #2014-01
Variance**

Present: Fletcher Seagroves, Chairman
Zach Tripp
Laura Horning
Kevin Taylor
Mike Thornton

Katherine Bauer, Selectman

Secretary: Peg Ouellette

Cynthia Nute, owner of Map 30 Lot 38-1, 9 Powers St, in the Industrial District, is requesting a Variance from Article V, Section 5.06.1 to allow the establishment of a coffee shop.

MINUTES APPROVED AND SIGNED ON JANUARY 16, 2014

F. Seagroves, Chair, opened the meeting, introduced the members of the board and explained the procedures. This case was tabled from the Jan. 2, 2014 meeting. The list of abutters was read. Robert and Cynthia Nute and representatives from Callahan Associates, and New Westerly Properties, abutters, were present.

R. Nute gave a brief background. They want to put a coffee shop in this location to serve the industries and residences in the area. They don't want to force something against the will of neighbors.

C. Nute explained that her husband's cancer and the loss of their son to cancer prompted her to explore healthy choices. She would like to have a place where people can have something good, healthy and affordable.

K. Taylor asked about plans for parking.

C. Nute said there was plenty out back, currently being used by a neighbor parking three vehicles. There is room for four to five vehicles, and they have discussed parking in front. They were unaware of a traffic issue because they hadn't been there enough; it could be a legitimate concern.

R. Nute stated they hadn't been aware of the school bus issue (mentioned in abutter's letter) – he didn't envision how traffic flowed at that time of the morning. They would like to know if their proposal is a possibility.

K. Taylor stated that part of granting variance is safety. If three cars continue to be parked in the back, people would have to park at the side of the street and cars and trucks going in and out, so he questioned the safety. He asked about any plans to have parking in the front yard.

R. Nute said they had discussed it and the entrance on the side street away from the building and near the corner. He said the yellow line in the plan in the packet appeared different from the plan he bought when he purchased the building.

F. Seagroves asked what plan he got.

R. Nute said it was a plot plan. Per one of the abutters' comments, he would get it surveyed. He couldn't imagine more than three or four cars at one time. There are rush hours and peaks and valleys. The intent is to close around 1:00PM so they would not be there for the afternoon school bus. Mornings would be a concern. They would monitor that.

F. Seagroves said one of his daughters lives in Longley Place and children get on and off the school bus in the area between the buildings and wait for the bus, and there are mothers there. The applicants would still have to go before the Planning Board with a site plan, if the ZBA grants the variance and the Planning Board would address it further. He didn't know the criteria for number of cars per tables, which is for Planning Board to decide.

C. Nute said there would not be a lot of tables.

L. Horning said that they would go before the Planning Board which would address the mechanics of parking, tables, etc. The Zoning Board addresses safety and will pass that information to the Planning Board.

C. Nute asked whether safety would pertain to any business they put there, because the building was zoned for business when they bought it.

F. Seagroves said that was a Planning Board issue.

C. Nute said they went to the Planning Board before they bought the building.

F. Seagroves said they have to meet the five ZBA criteria to be granted and one is safety, which is the reason for asking about parking. That is a busy road.

C. Nute said they wouldn't want to do anything that would affect the children; they were testing the water to see what they can do with the building.

Z. Tripp asked if they had plans to alter the structure and asked the size of the structure.

R. Nute said they would be keeping it the same as it is currently. The size is about 580 SF.

Z. Tripp asked about the number of employees and about interior of the building, as the outside looked like a house.

C. Nute said there will be two employees and described the interior which is somewhat like a house.

L. Horning asked about signage and outdoor lighting.

R. Nute said they envisioned one out by the side street.

C. Nute added that there was a pole there that looked like it had a sign on it at one point. During winter months they would have some lighting at the front door in the morning and it would be nice to have a small light on the sign.

F. Seagroves opened the meeting for public comment.

K. Bauer of 247 N. River Rd. said one of her main concerns was parking. The Planning Board has a formula for required parking spaces, which may be more than two or three. She wanted to tell the applicants that the so-called front lawn may have to be turned into parking. After asking the time the business would open in the morning – 6 a.m. – she said it would be dark and they would need some lighting in the parking area.

There was discussion regarding the discrepancy between the plot plan and the plan in the packet. She said if the plot has the area in the rear they could put some cars and trucks there; but if the plot it without the area in the back, they will probably have to put parking in the front even though it is very attractive. She suggested, if approved by ZBA, before they go to the Planning Bd. they get the actual area of the lot determined. Just warning applicants that if area was not what they thought, they might have to do some serious work for parking

Charlie Patterson of Westerly Properties on Powers St., an abutter directly behind the subject lot said his primary concerns were parking and traffic. He firmly believes that if it is your property you do what you want on it. But his business, directly behind the Nute's takes up all their parking spaces during the day and they have no additional spaces. Occasionally they've been able to use some of Callahan's parking if he has a big meeting. He was also concerned about trash. He didn't know the requirements or what their plans were; but first and foremost is the parking. In the morning which would probably be when the coffee shop would be busiest, all the residents are coming out to go to work. He asked if parking would be on his side, or someplace else, or in the right of way granted to Longley Place? Many years ago that was for emergency vehicles. He wasn't there to say he objected or was in favor, but would like more information.

Z. Tripp asked the nature of his business and how many cars. Mr. Patterson said they filled all their spaces.

C. Patterson said they are Lot 30/38-2. In the aerial photo in the packet, his truck is parked on the Nute's property. Adjacent to the side of that is where they think the property line is, but he is not sure anyone knows for certain. One of his employees is a surveyor on the side and he had asked him, before the Nute's bought the property, to do a rough survey. It is not certified but the best guesstimate is that the error of measurement is 3' to 5'. Within about 5' of both sides of his building there is a railroad right of way, although tracks are still some distance away. It is not a lot of property to work with.

Z. Tripp asked the nature of his business.

C. Patterson said he owned a couple of security firms. One part of his building is office and the other part is warehouse space to support equipment service and repairs they do.

Z. Tripp asked their hours.

C. Patterson said about 8 to 5 or 8 to 4, but they are a 24-hour operation with people coming and going all night.

Suzanne Fournier of 9 Woodward Dr came forward and said she is not an abutter but she felt the case affected a broader public. Why is not being addressed? She then read Section 5.06.3 of the Zoning Ordinance. Does Section 5.06.3 mean anything and why isn't it being addressed in the application? She referred to the ZBA Handbook, page II-10 and said because the spirit and intent of the Industrial district did not include retail uses she recommended the ZBA deny the variance.

F. Seagroves said the ZBA was authorized to grant a variance for something not allowed as long as it met the five criteria. He said that was explained when she spoke at the meeting for St. Joseph's application and reiterated that they can grant a variance for something not allowed, as long as it met the criteria.

S. Fournier said she understood. But what does section 5.06.3 mean?

F. Seagroves said anything not listed would need an application for a variance. It is not allowed but can be granted under a variance.

S. Fournier disagreed because that Ordinance exists as a prohibition and in the Handbook when an Ordinance contains a restriction against a particular use, and our Ordinance contains that restriction against retail uses in an Industrial district.

F. Seagroves said it didn't state that particular one.

Z. Tripp said that section is contained in every district.

Z. Fournier referred to a general one in Chapter II which covers all districts.

Z. Tripp said it was also in Section 10.01.0 which allows the variance.

S. Fournier asked him to read it, which he did.

L. Horning said you would have to really get into the Zoning Ordinance for the State to understand the administrative relief explanation. When the Ordinance becomes restrictive to someone, preventing them from reasonable use of their property, the Zoning Ordinance is there to grant them relief. Administrative relief regarding variances, special exceptions, etc. The information can be found on line for review.

S. Fournier felt it still was a problem with the Ordinance's prohibition being a restrictive statement about uses not allowed in the district. She felt it needed to be resolved, maybe by Superior Court.

L. Horning said one has to take the whole Ordinance into consideration and the entire definition of administrative relief. Every property is unique and deserves unique attention.

K. Bauer said discussed the history of that clause that says anything not listed is not permitted and said it possibly should be reworded because a couple of people came into the Planning office saying their use was not listed, therefore they could use it for what they wanted. It is a little misleading because going back to the statement that the Board can grant relief to any property owner if they met the criteria, they are not easy. One of the hardest is hardship. If this application passes, before it goes to the Planning Board, the boundaries of the lot have to be established which will affect parking because there is a formula in town if they want to run a business like they want.

R. Nute said they envisioned serving the industrial businesses. In their minds, they fit in.

Steve Callahan owner of the building on lot 38-30 next door said he has been in the building for the past 30 years and he is concerned with traffic and parking. His business brings trucks in and out periodically and into the driveway. It is not a town road. A coffee shop would be nice, but he's concerned with not having enough access to move large trucks in and out. It is busy in the morning and the front lawn is generally filled with cars at 8:00 AM. He uses the parking lot because it is the only paved area.

Z. Tripp asked Mr. Callahan if the large paved area between Powers St and Callahan's building was his parking area.

S. Callahan said yes, it had been there since before he bought the building. It doesn't have a defined boundary between the street. The blacktop between the condos and their building was also their property as well as all that behind the building.

Z. Tripp asked about the nature of their business and the hours of operation.

S. Callahan said they operate from about 8:00AM to 5:00PM and distribute merchandise to large retailers. Truck traffic is limited, not daily, but there are times of the year when they bring in more and during peak seasons they bring in temporary labor, so their parking lot is full.

Z. Tripp asked if there was parking behind their building.

S. Callahan said yes.

K. Bauer asked whether Longley Place was a private road.

S. Callahan said it was.

K. Bauer said, in her opinion, that was another reason that parking might have to be in front of the building exiting onto Powers St.

S. Callahan said all three properties own a piece of that driveway. Longley Pl was granted a right of way and a stipulation of that is that the condo complex maintains that driveway. They sand and plow and salt it. They keep talking about repaving it, but they all own a chunk of that driveway.

K. Bauer asked if the business is take-out as well as sit-down. Will they need to be able to come out onto whatever street and turn around and head out, not back out onto Powers St or back into Longley Pl.

F. Seagroves agreed. Even though there is a stop sign, people don't stop.

M. Thornton said there seemed to be a couple of issues before even knowing what they are trying to permit; the boundaries of the property, number of spaces required and could those fit into the footprint of the property. It doesn't make sense for the applicants to invest money to find out they are one or two spaces short.

Z. Tripp felt there was still value for applicants to go through the five criteria. This might be an application for a special condition that, if the Board approves, it be conditional upon the Planning Board to approve the parking.

F. Seagroves said they will have to go before the Planning Board anyway, but the ZBA could stipulate that they are concerned with parking.

L. Horning said all the allowed uses in the district would generate significant traffic and are part of the criteria the Board has to consider and she understands concerns of the Board. It is important to get a plan to manage traffic. As stated, this is New Hampshire and you can seek relief and do with your property as you see fit, but there are things allowed in the district that would generate great deal of traffic and they would not have to come in front of the ZBA. Not to say they wouldn't be in front of the Planning Board. We could do a condition for this application that the Planning Board look at the plan and help outline parking and egress patterns. Any time a new business is allowed in a neighborhood, neighbors get concerned about overflow so it doesn't flow into their property. The applicants will have to be cognizant of their neighbors.

K. Bauer asked that one of the conditions be that the lot lines be addressed, otherwise the applicants could get snarled in all kinds of legal issues.

A member of the audience asked whether this case would go to Planning Board and whether they would be notified of that meeting. He was told they would.

F. Seagroves said it may be granted with stipulations and then it goes to the Planning Board which has its own rules. They would be able to go there.

R. Nute asked if they would be able to go to them ahead of time? F. Seagroves said yes.

F. Seagroves asked the applicant to read the application into the record.

R. Nute read the application, with additional comments: #2 – add their intention is to serve the area; #4 – they did. About traffic, they will need help with that and they will take this to the Planning Bd. Being small building it will be a small establishment.

F. Seagroves asked board for any further questions; there being none, he proceeded to go over the five criteria.

1. Would granting the variance not be contrary to the public interest?

Z. Tripp – yes. A coffee shop on this lot in this Industrial district would not unduly and to a marked degree violate the zoning objective. It would not alter the essential character of the neighborhood. It is a unique neighborhood where it is situated in a transition zone with residential behind them.

K. Taylor – no. It would be contrary to the public interest. Concerned about safety with the road. It is a private road. Concern about parking. Applicant had not convinced him of the safety.

L. Horning – it would not be contrary. Looking at use in the Industrial District, many of them outweigh the traffic pattern that could be going on there. It is Industrial zone and close to a mixed area with residential behind and almost across the street. This shop is much more minimal impact than any allowed uses already there, by comparison. It would not to a marked degree change zoning objective in that area.

M. Thornton – Conditionally, yes. Conditional on boundary, parking and safety. He cannot see that being industrial use with such a small building and building of that character unless it was an overflow from an adjacent business.

F. Seagroves – yes. Intent of the Industrial district is to provide areas for manufacturing, processing, assembly, questions.

2. Could the variance be granted without violating the spirit of the ordinance?

K. Taylor – no. Based on Zone I, he understood what they can put in there, but a coffee shop is not zoned for that. Yes, if you put a farm stand or lawyer's office there would be traffic, but on that point, no.

Z. Tripp – one of the tougher questions for him in this case. But, yes, spirit of the ordinance is to have separate area for industrial uses which typically don't mix with other uses. This was unique industrial area

where you were having discussions about school bus stop. He didn't think this violated spirit because a retail coffee shop was very in line with this Industrial zone. If this were very residential and they wanted to put it in the middle of residential, that would be a concern. He didn't believe impact on health, welfare any more than industrial area. It would not be decreasing health, welfare and safety. Laura had read in acceptable uses. He would recommend a stipulation re parking and safety which kind of lends to hardship, if they get approved by Planning Board they have off-street parking then safety is addressed. Lot 38-30-33 had 5 to 6 spots for cars just outside of right of way; Lot 30-35 has parking and there is already parking and traffic on the right of way with large trucks. He didn't see how, if they can get approval of off-street parking through the Planning Board it would include layout that would not violate ordinance.

M. Thornton – yes. If the building were different character and size and in the interior of the park, he would say no. He could not think of another practical use of the building that was not an overflow of an adjacent business; the building would be fallow.

L. Horning agreed with Mike. Point was the location of the property was conducive to the request, in her opinion. Leeway is in order in the way it sits on the lot and egress to Powers St. Building is small and she didn't believe it violated health, safety. There would be a much lower traffic pattern, in her opinion, and less than some of the industrial uses permitted in the district. It could be granted without violating spirit.

F. Seagroves – yes. They were looking for health, safety and welfare. Safety and welfare were important, but if they made a stipulation to the Planning Bd. they would look into that.

3. Would granting the variance do substantial justice?

M. Thornton – yes. Reasons they had all stated lent themselves to that answer.

K. Taylor – yes

Z. Tripp – Loss to the individual would be outweighed by the public gain. Lot was not suited to the industrial zone so not allowing retail would be a loss. He didn't see the public would gain by denying.

L. Horning agreed with Zach. Granting would do substantial justice. Loss to the individual was not outweighed by public gain.

F. Seagroves – yes. For same reason as Zach and Laura. Handbook states any loss to the individual not outweighed by gain to the public is injustice. He didn't see gain to the public by denying.

4. Could the variance be granted without diminishing the value of abutting property?

L. Horning – yes. In her opinion, it probably enhances it. If she were planning to open a small industrial business she would be happy to have a coffee shop within walking distance. With this particular case and property with its size and proximity to the residential area..

M. Thornton – it would be up to applicants. They need to resolve issues stated. It will take a lot of working with neighbors to make sure there is not a problem. But he would say yes, it could be granted.

K. Taylor – yes. It could be granted without diminishing value.

Z. Tripp – yes. He didn't see how retail would diminish value of industrial properties.

F. Seagroves agreed. He didn't see granting would cause diminishing value of abutting property.

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

ii. The proposed use is a reasonable one.

B. If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Z. Tripp – yes – Unique things about the property that did not make it suitable for industrial uses. Size is 580 SF, there is residential at end of the property. It was a unique situation that there was a school bus stop in middle of industrial area. Denying a variance and attempting to use that for industrial would be a hardship. Re no fair and substantial relationship, yes, because of special conditions of the property. Any

industrial use would have just as many concerns—off-street parking, etc. All properties must have the same burden. The surrounding properties all have parking and traffic on the private lane and traffic by school kids. A coffee shop was reasonable. There were residential neighbors. Applying industrial requirement to the property would be unreasonable. Kevin and Mike had given example that latest use would be office property and could have 3 to 4 employees coming and going with same concerns. Having office space could not have frontage on the neighbor lot. Could have no industrial business. Due to the single property, small structure and odd lot, there would be unnecessary hardship.

K. Taylor – there would be unnecessary hardship because of configuration of the lot. He still had concerns but Planning Board would take care of those. Making sure it had to come out of private drive and not Powers St. Concern about traffic in and out of private driveway. If they deny, it would cause hardship.

L. Horning – Denial would be a hardship. Re it being a private driveway she didn't know how fair it would be to penalize as to how much they can use it when other abutters are using it. Planning Bd. will address that. They are on the private road and have a right to use it. They should not penalize one. As Chair, Zach and K. Bauer mentioned, getting boundaries checked should be done, making sure lot is square. Lot is very small and not conducive to industrial. Square footage is very small and limits any industrial use and almost constricting them. When ordinance is restrictive they have relief. As long as Planning Bd. addresses public safety and parking, applicants address lot lines making sure parking is on their own parking, and Planning Bd. addresses egress, she believed denial would be a hardship to this applicant at this location

F. Seagroves agreed. This property was unique. There wasn't a lot you could put there. As had been stated, they had a parking problem but things they can resolve with the help of Planning Bd.

M. Thornton- Because in his mind if they took strict interpretation of Industrial he couldn't imagine they would not have the same concerns and questions about this property that doesn't lend itself to any other application. Applicants need to keep in mind they need to get themselves there in a car and get deliveries in and out. To do so they would have to orchestrate with neighbors because they had the same concerns.

F. Seagroves asked for a stipulation.

L. Horning made motion that if this variance passes it would be subject to the Planning Board approval on the traffic pattern as well as the Planning Board's reviewing a current survey plat of that piece of property in order to address the parking. Planning Board will need access to an updated survey of the property in reviewing where parking should go.

Z. Tripp seconded a motion for that stipulation.

Vote on the stipulation:

K. Taylor – yes, M. Thornton – yes, F. Seagroves – yes

Vote on the criteria:

Would granting the variance not be contrary to the public interest?

L. Horning – yes; K. Taylor – no; Z. Tripp – yes; M. Thornton – yes; F. Seagroves – yes

Could the variance be granted without violating the spirit of the ordinance?

K. Taylor – no; Z. Tripp – yes; M. Thornton – yes; L. Horning – yes; F. Seagroves – yes

Would granting the variance do substantial justice?

M. Thornton – yes; Z. Tripp – yes; K. Taylor – yes; L. Horning – yes; F. Seagroves – yes

Could the variance be granted without diminishing the value of abutting property?

Z. Tripp – yes; M. Thornton – yes; K. Taylor – yes; L. Horning – yes; F. Seagroves – yes

Would denial of the variance result in unnecessary hardship?

L. Horning – yes; K. Taylor – yes; Z. Tripp – yes; M. Thornton – yes; F. Seagroves – yes

Z. Tripp made a motion to approve, with special conditions for parking.

L. Horning seconded.

Final Vote:

L. Horning – yes, K. Taylor – no, Z. Tripp – yes, M. Thornton – yes, F. Seagroves – yes

F. Seagroves informed the applicants they had been approved and that they should go back to the office for information about the next step.